

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5471**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30, July 11, 2006 in Sacramento, with Vice Chair Ann M. Richardson presiding.

**2. Roll Call: Members**

**Present**

**Absent**

Ann Richardson, Vice Chair	X	
Virginia Strom-Martin	X	
Jack Cox	X	
Don Novey	X	
Terri Carbaugh	X	

**3. Approval of the Minutes:**

The June 14, 2006 minutes were approved by all members.

**4. Board Member Reports:**

Vice Chair Richardson noted that an oral argument is scheduled in the afternoon, that she is looking forward to a good discussion of the issues, and anticipates the Board will be able to issue a decision that lends some guidance to the field in a very interesting area of law.

Board Member Strom-Martin reported on what she termed to be a fabulous conference the CUIAB put on in San Diego. She stated she was able to attend for about two and a half days, attending many of the workshops and sessions. The conference was an organizational triumph, and everyone she talked to, from all over the country, was very complimentary.

Vice Chair Richardson stated that she had heard the same thing, that we had done a terrific job of organizing the conference, and that they want us to convene future conferences.

Executive Director/Chief Administrative Law Judge Jay Arcellana agreed with those comments, and stated that every three years the National conference is held jointly with the Department of Labor, called the triennial. He has been approached about hosting the conference for each triennial. He hadn't wanted to tell the staff yet, because they are still recovering from this one, and it is literally a two-year planning process. California represented itself well and overall it was a fantastic week. He is still receiving letters from various chairs throughout the country commending us.

Vice Chair Richardson stated what a nice compliment that is and that it speaks to the efforts of our staff who continually amaze her as to how wonderful and hard-working and dedicated they are when it comes to representing this agency. Because it is such hard work, Vice Chair Richardson said she should give them some say about whether or not we should agree to host the conference every three years.

Vice Chair Richardson said that when the CUIAB does something, it does it well, and she congratulated everyone who participated in the conference. She also thanked Member Strom-Martin for attending and representing the Board.

## **5. Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief ALJ Arcellana reported the biggest news over the past month has been the work load. It was a remarkable month for both the field operations and the agency as a whole. For verifications, the intake of cases, the agency registered 24,772 cases in the month of June, the highest month since June of 2004. Whether it was by coincidence or good timing with the case load increase, it coincided with the largest month load increase in verifications, which was very positive. For the quarterly comparisons, through June, there was an increase of almost 11,000 cases, or 18%. But ironically, for the fiscal year, the increase was only 1%. Total verifications for the fiscal year was 245,000, compared to 245,000 last year. This is an indication that the system has stabilized, and what happened throughout the year was some fluctuation. All of the adjustments that were made were in reaction to those fluctuations. So the case load increase came at a good time from an operational perspective.

Dispositions, which were a big push because of the budget, were at 32,810 cases for the month of June, the highest monthly total ever. The next highest was in March of 2004, and we exceeded that by 5,500 cases. So the totals for June were simply remarkable. A total of 22,000 cases were disposed of in May, which we thought was a high month, but we increased that by 46%. For quarterly dispositions the past quarter showed an increase of 10,000 cases, up 17%. However, if you look at the overall numbers for the fiscal year, there was actually a drop in dispositions, so again there is that wild fluctuation in the workload where the ability to manage the workload and to make decisions to increase or decrease the case load is so important to us. Now, as a result of what we accomplished in June, we don't have a backlog and we are pretty much current with the workload. The open balance statewide is below 30,000, the lowest it has been since June of 2001. The system is now in equilibrium and we are in a good place heading into the summer months with the staff planning vacations. The number crunchers have done a good job in planning this thing out.

An interesting by-product of this is that in June all of the offices were energized. For the first time in a while, staff worked late every Friday, and many office staff got together and socialized during the evening hours. Facing challenges like this tends to bring staff together, which can be a big moral booster, giving employees a

heightened sense of purpose and accomplishment. The net result of all this is that as we headed into May, we were staring a deficit in the face, and as we left June, we are going to have modest surplus. The CUIAB has produced a surplus for the last seven years, which is remarkable given the budget situation in the rest of the State. So, kudos to the entire agency for a remarkable month.

Executive Director/Chief ALJ Arcellana commented that, historically speaking the biggest months are usually January-March, so we are seeing a change in the trends because now it appears that the big months are April-June.

Vice Chair Richardson inquired as to the status of DI, tax, and other non-UI cases, to which Executive Director/Chief ALJ Arcellana responded that dispositions of such cases dropped somewhat in June because of the big push for UI cases, but everything has already returned to normal in that regard.

Finally, Executive Director/Chief ALJ Arcellana reported that the average case age was 25 days, a new low. For a case to come in the doors and then go out of the doors in 25 days is very impressive. The median case age is 21 days and that is good because it is lower than 25. The workload numbers were good, the budget numbers were good, and that means the agency is in a good place heading into the new fiscal year. More adjustments will need to be made, of course, as the year progresses, depending upon such things as retirements and staffing levels. Of course, the pay increases will have an impact on workload and budget as well.

## **6. Branch Reports:**

a. Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the Administration and SEIU have come to a tentative agreement on contracts for support staff. For all support staff statewide, there will be a one time bonus of \$1000. So, for CUIAB, with 320 support staff employees, there will be an immediate impact upon our budget of \$320,000. It is not known yet if that is going to be prorated between full time and part time. There is also going to be a cost-of-living increase of 3.5%, effective July 1, 2006. That translates to a budget cost of about \$435,000.

In response to an inquiry by Vice Chair Richardson, Executive Director/Chief ALJ Arcellana advised that the main contract negotiations concerning salary matters is conducted by representatives from DPA on behalf of the State.

Executive Director/Chief ALJ Arcellana reported that the SEIU agreement also provides for a COLA (cost of living increase) of between 2-4%, effective July 1, 2007. The amount will tied to the consumer price index; if it is a 2% increase then it will cost CUIAB \$260,000, and if it is a 4% increase the cost to CUIAB will be \$500,000. So, we will have to start building in these numbers as we construct the work load and budget. The final significant element that was negotiated in this contract is equity adjustments for certain working classifications, primarily IT staff at an approximate cost to the CUIAB of \$53,000. Given all of these salary increases some big decisions will need to be made. We are looking at ways to

streamline the system, centralizing some functions and regionalizing others, to cut down on the duplicity of the workload.

Executive Director/Chief ALJ Arcellana went on to report that the State Personnel Board will be issuing a report to the legislature next month on our bilingual services program. The report is for FY 03-04, as they have a significant lag period. CUIAB came out number one or two statewide, so we will look very good in this report.

Finally, Executive Director/Chief ALJ Arcellana reported that the Governor's Office has applied an across-the-board cut to all out-of-state travel as a matter of policy. The good part is that instead of telling us where to make those reductions, they have left it up to each agency to decide where to cut. For CUIAB the reduction amounts to \$5000.

Board Member Novey noted that Executive Director/Chief ALJ Arcellana has excellent leadership and delegation skills, because for most of June he was recovering from back surgery, while the staff did this enormous and fantastic job in pushing out the cases. Executive Director/Chief ALJ Arcellana thanked Board member Novey.

Vice Chair Richardson commended Member Strom-Martin for continuing to do her daily case load while she attended the NAUIAB conference in San Diego.

**b.** Deputy Chief ALJ, Appellate Operations Steve Angelides noted that in his last two monthly reports he reported April and May were essentially average months in Appellate Operations (AO). June, however, was far above average in dispositions. In June AO disposed of 1,792 cases, which is 128% of the calendar year average, and the fifth highest number of dispositions in the past three and one-half years. This was due to the caseload increase as a result of the deficit reduction plan, as well as our full-bore use of retired annuitant ALJ's in June, again as part of the deficit reduction plan.

Deputy Chief ALJ Angelides noted that they did all this with about 25% fewer support staff than normal in AO, and without the help of any retired annuitant support staff due to the deficit reduction plan. As such this is an extraordinary accomplishment for the AO support staff, and the AO supervisors and support staff are to be commended for their dedicated hard work.

Deputy Chief ALJ Angelides also reported that registrations in June were 1,330, which is 98% of the calendar year average. As a result of average registrations and the large number of dispositions, the balance of open cases fell to 1,979, which is 84% of the calendar year average. This figure is notable because it is the first time in three and one-half years that the balance of open cases has fallen below 2,000.

Since virtually all of the older cases were disposed of in June, the average case age fell to 36 days, which is the lowest in the past 12 months. The median case age fell to 31 days, which is also the lowest in the past 12 months.

Deputy Chief ALJ Angelides reported that the FO to AO "appeal rate" also hit a 12 month low in June, falling to 4%, compared to an average of 6.1%. The "appeal rate" is calculated by comparing the Board Appeals registered in a month to the dispositions in the field in the same month. Since it takes about a month between a disposition in the field and the registration of a Board Appeal, and the registrations were average in June, this low "appeal rate" is more likely due to an increase in dispositions in the field because of the deficit reduction plan than to an actual decrease in the rate of appeals. As a result of the deficit reduction plan Deputy Chief ALJ Angelides expects to see a spike in registrations in AO in July and August. Hopefully the substantial reduction in the backlog will put AO in a good position to handle that spike.

Deputy Chief ALJ Angelides reported another interesting statistic in June: a substantial drop in the number of pages of transcripts typed in CTU, from a calendar year average of about 12,000 down to about 7,500. This was due to CTU's inability to use retired annuitant transcribers in June due to the deficit reduction plan, the loss of the RSU typists who had been on long-term loan to CTU because they were needed to type field decisions, CTU's loaning of typists to AO to assist with decision typing, and, at the end of June, CTU's loaning of typists to RSU to type field decisions.

The three FO ALJ's trained in May to assist AO have all volunteered to help again this summer. Altogether they will be helping for 9 weeks this summer. So this summer Board Members will again be seeing proposed decisions from ALJ's Linda Bytof and Carol Larsen from Oakland, and ALJ Betsy Temple from Field Operations Headquarters.

Deputy Chief ALJ Angelides reported that so far two AO ALJ's, as well as himself and Vice Chair Ann Richardson, have expressed an interest in helping the ALRB with elections if they are available when the time comes that they need us. Last year three ALJ's from AO and Deputy Chief ALJ Angelides helped the ALRB with a large election. It was a very rewarding experience for those of us who helped.

Finally, Deputy Chief ALJ Angelides reported that on the social scene, the invitations have gone out for the picnic in honor of the retirement of ALJ Mike Canar on July 20, and everyone is invited.

Vice Chair Richardson stated she had one little matter for house keeping. She stated that she really enjoys reviewing disability cases but finds it difficult to do so when the medical records are not scanned into the e-file. She wondered if AO would scan in the medical records in all disability cases.

Deputy Chief ALJ Angelides responded that they would need to talk about it because they have had some discussions about this in months past when Chair Thornton was on the Board. They had talked about revising the scanning form, but ultimately decided to leave it to the discretion of the ALJs. The matter will need to

be revisited, but no commitment can be made at this point because of the volume of records involved.

Vice Chair Richardson stated that she was thinking more along the lines of the records that are actually referred to in the decision. For example, if it is the IME report and the treating physician's certification, then those should be scanned into the file.

Deputy Chief ALJ Angelides stated that is certainly something that is doable, and that he will look into it and get back to her.

Member Strom-Martin stated that she agreed that it is very helpful when those documents are scanned in and if they are not, then simply request it.

Vice Chair Richardson stated that requesting is very easy for them to do and when they make a request it happens right away, but it delays the decision on the case for three or four days. That is her primary concern, that they don't delay the decisions because they are going back and fourth about the medical records. Although that is a workable solution and they have been trying it for the past year since they broached the subject with Chair Thornton, it seems to delay the cases. She stated that she would like Deputy Chief ALJ Angelides to think about that and get back to the Board.

Deputy Chief ALJ Angelides replied he would do so, and thanked Vice Chair Richardson.

c. Deputy Director, Administrative Services Branch Pam Boston reported that David Goebel of the IT branch, who was responsible for the maintenance and creation of the Bench, has separated from the State and moved to San Diego. Nakesha Robinson will be taking over his duties in the interim. Also within IT, it was discovered with the implementation of digital recording, that our network is experiencing an increase in traffic that has caused delays in accessing our network resources. As a result, IT has started to block some of the nonessential internet sites. This will enable the CUIAB to process work more quickly.

Vice Chair Richardson interjected that she had received the e-mail on that issue, was wondering exactly what that means, how are they blocking non-essential sites, and what is considered to be non-essential.

Deputy Director Boston deferred that question to IT manager, Nick Dressler.

IT Manager Nick Dressler replied that IT has the ability to block specific web sites using a software program called web-sense, which blocks out things like "guns dot com". This is actually just a test right now, as they are trying to determine if this will make a difference in terms of outstation traffic. They will have some data figures by the end of the week, and if this test has not helped they will need to look at the overall workload and how it is affecting the system.

Deputy Director Boston went on to report that within Business Services there have been some major staffing changes: Steven Brothers moved from Personnel over to be a facilities rep; Yvonne Baroro moved from procurement to be a facilities rep; Sarah Bacla, who was the LSS II in San Diego, has recently accepted a job to be a facilities rep in Southern California. Business Services is fully staffed again for facilities. Also, Naomi De-Leon Diaz moved from Field Operations Head Quarters to procurement, as well as Jeannie Beckman.

Deputy Director Boston also reported that the San Francisco Office lease was signed yesterday. It was a long and drawn out process, but it's finally done.

Deputy Director Boston further reported that, as mentioned at the last board meeting, there have been changes in the way we book airline reservations with Southwest. Accordingly, Travel Coordinator Kim Langan prepared a memo to staff outlining the changes on how to set up the accounts. Kim also set up some training for the executive secretaries to assist them in working through this new process. It has been slow and there have been some problems, but for the most part and in the long run this should be good, because by making reservations directly through Southwest CUIAB will save \$15 per reservation, the service fee we were paying to Sacramento Travel. Another area of travel that has recently changed is with regard to rental cars. Enterprise Rent-A-Car has become the primary vendor for rental cars for the State. We can now make reservations online directly with Enterprise, again eliminating a service fee. They have also made it easier for direct billings, and the employee won't have to carry their General Services card.

Lastly, Deputy Director Boston reported that there are individuals within the Administrative Services Branch who were instrumental in planning and executing the National Conference: Victor Knight drove to San Diego, hauling all of the equipment and setting it up. He handled the audio/visual equipment, and was one of the official photographers for the event; IT Manager Nick Dressler attended and helped set up the A/V equipment, and served as a panel member on the digital recording panel; Pat McArdle actually started planning the conference two years ago in 2004. She negotiated all of the contracts with the hotels, and made the conference budget presentation to the NAUIAB Board members. Pat also worked the reception desk at the conference and was instrumental in preparing the hospitality suite. Overall, Pat played a key role in making the conference a success. Deputy Director Boston extended a personal thank you to these people because they put a lot of work into preparing for the National Conference.

d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that during the past two years, a core group of P&PM staff has been planning the NAUIAB/DOL triennial conference. In the year 2000, California was also the host of another successful NAUIAB/DOL triennial conference in San Francisco. This latest conference in San Diego left an impressive mark with other states with CUIAB's ability to orchestrate such a successful National Conference. Over 41 states sent representatives to San Diego, and the majority were either board members or board chairs. A number of states also sent their support supervisors, and an impressive contingency was in attendance from the

Department of Labor as well. There also were representatives from the Province of Quebec, Canada, since Canada has an Unemployment Insurance Program.

In addition to the individuals recognized by Pam Boston, Deputy Director Walton-Simons recognized Martha Silva Renee Erwin, Jeannette Perez, Ryann Rojas, Cindy Abercrombie and Pat McArdle. This was the core group that planned this conference from the very beginning.

There were five managers from the P&PM Branch who conducted workshops, including ten workshops which were developed for legal support supervisors. The P&PM managers worked with other state panelists, which included representative from Connecticut, Florida, Georgia, Michigan, Mississippi, Oregon, Pennsylvania, and Washington DC. Deputy Director, Planning and Program Management Branch Mary Walton-Simons recognized Martha Silva, Renee Irwin, Martha Diaz, Ralyne Long, and Michelle Robinson as those instrumental in conducting those workshops.

The workshop panelists and audiences discussed the changes and trends occurring in states nationwide. Of significance are three manger trends which are occurring. One is the digital recording of hearings. Digital technology is taking place in a number of states, and the workshops on digital recordings were very well attended. The next noticeable trend nationwide is that ALJ's more and more are typing their own decisions. This is a wide spread practice and voluntary. California is one of a few states in which typists are used to type ALJ decisions. The other noticeable trend is the significant reduction in the use of transcript typists nationwide. There are only 10 states left that have confirmed they still use transcript typists on a regular basis, and among those states the cut off between tapes and transcripts is coming closer to two hours. Some states have contracted out the transcription functions when transcripts are needed.

Lastly, Deputy Director Walton-Simons reported that the P&PM Staff is still providing assistance to the Inglewood and Fresno Offices of Appeals. They are rotating five staff members into Inglewood through the month of July: Martha Diaz, Ralyne Long, Rosemary Pineda, Joyce Bernatzke and Anissa Mitchell. There is one P&PM staff member, Mirella Vasquez, who provided assistance to the Fresno office in June. She also volunteered to assist with the ALRB elections. She assisted with the ALRB elections last year as well. Later this week, several P&PM Managers and Jay will be meeting with Inglewood PALJ from Inglewood, John Martin, to discuss office matters and possible staff training to improve on the work processes.

Vice chair Richardson thanked the P&PM staff for making the conference so successful.

Board Member Novey stated he would like to know what Jay thinks about ALJs typing their own decisions.



Executive Director/Chief ALJ Arcellana stated that if it were five years ago, this would not even be a reality but as more and younger judges have been hired from the private sector, they are computer literate so it is much easier for them to type than to dictate. They feel that they have better control over the product and they can make changes to the decision right there instead of having to send it off to a typing pool and then wait for it. They feel that the facts, right after the hearing, are fresh in their mind and so they can make better decisions. There are a number of judges who have expressed interest and would like to do more typing, but it presents a labor relations issue. That is the thing lurking in the background in terms of judges volunteering to type their own decisions. We have a pilot study where one of the judges types her own decisions and is developing macros so you press button one and you get the standard paragraph 'x'. Then they just need to concern themselves with the body of the decision. This is something that we are definitely looking at, and that would phase down on the number of typists so there is a balancing act. That doesn't mean that it will be a reduction in the resource of typists, it just means that we can redirect those resources into other support staff functions. We have the equipment and the resources to provide the training. The judges right now are doing so voluntarily and if we feel like this is something we need to do at some point in time then we will sit down with the union and take care of it. The other upside to it is that the decisions will get out quicker because they do not have that time lag going back and forth for corrections. There are also a number of judges who don't type their own decisions but do type their own corrections. So they will get the decision back from the typist and make the corrections and get it right out in the mail. Ten years ago there was dialog with the Department about a judge finishing a decision and pressing a send button and it goes to an EDD mail center, they wrap it and out it goes. We were opposed to that because we felt like we needed to review the decisions a little closer. Ultimately, I we will be going in that direction, not because of the technology but primarily because the judges who are coming in prefer to type their own decisions. They are just more comfortable with it and you can't tell them no. There will be some labor relations impact from the support staff. As we have always done with CUIAB, we try to go gradually into these issues with regard to labor relations, and we want to make sure that the judges have adequate training. The net effect is that as more and more judges type their own decisions, they can be a little more flexible in their calendar. We would probably be able to get away from the rigid requirements that we now have in terms of length of hearings and what not. They can arrange their calendars based upon when they want to type their decisions. The Chief ALJ from New York told us at the NAUIB conference that he has mandated his judges to type their decisions.

Vice Chair Richardson inquired if there is a problem with doing this on a voluntary basis, to which Executive Director/Chief ALJ Arcellana responded there was not.

Executive Director/Chief ALJ Arcellana stated that a lot of staff, who would like to go in this direction, is reluctant because they don't want to go against labor. This is something that is positive and if we go about it in a logical way we can work this in with input from the judges. The most important thing we will need to do is sit down with the judges and the support staff and see how we can work through this thing

Probably pilot an office or two, but probably five years from now, most judges will be typing their own decisions.

Board Member Carbaugh inquired if this would be saving the judge's time or if this will be increasing work load.

Executive Director/Chief ALJ Arcellana responded that the hardest aspect of this job for some judges when they get hired is learning how to dictate, and they spend a lot of time dictating and learning how to dictate whereas a lot of judges already have the typing skills and it is easier for them to sit down and type. So in terms of the time aspect, Executive Director/Chief ALJ Arcellana thinks it's a wash. Once you get in the groove of dictating, it could be a little quicker dictating, but the big change will simply be how a judge can organize his or her day. The ability to type a decision either right after a hearing or during a lunch break or conduct all your hearings and then get home and beat the traffic and type all of your decisions at home will allow so much flexibility and that is a big plus.

Vice Chair Richardson inquired if any other states use the macros. Executive Director/Chief ALJ Arcellana responded that virtually all of the other states use them. He went on to comment that so much of the language is boiler plate anyway. What is particularly annoying to him, though, was the decision by some states to go to 'check the box' decisions. He found that troubling because there is not case-specific analysis, so it is more like a decision from Social Services where you check a box and say eligible or not eligible.

Vice Chair Richardson stated that her main concern with the macros is that they will turn into standard boilerplate decisions.

Executive Director/Chief ALJ Arcellana responded that that is a legitimate point, but that the macros that exist now have been developed by the individual judges and are in their own words and writing style. Each judge would be taught how to develop individual macros to suit his or her own style and so it would be boilerplate statewide, but boilerplate for that judge.

Vice Chair Richardson stated that if we are going to try this on a pilot basis, we should do so in a smaller office.

Board Member Carbaugh stated that as she understands it now, the judge dictates and sends it to the typists, who then types it and sends it back to the judge for review; then it is mailed out, with which Executive Director/Chief ALJ Arcellana agreed.

Board Member Carbaugh asked if there is a second pair of eyes who reviews it for errors.

Executive Director/Chief ALJ Arcellana responded that the only person who reviews the decision is the judge. There is an exception and that is if the judge is away on a trip and we need to get a decision out, then the PJ may sign off.

Generally speaking, it is a requirement for the judge to review their own decisions. Most judges don't like someone else reviewing or signing their decision because they may see an error or grammatical preference that someone else would sign off on. So right now, most judges sign their own decisions.

Board Member Strom-Martin stated that she knows that sometimes the Board Member's do their fair share of editing and that the AO judges are editing too in terms of language and the way things flow. Not necessarily changing the decision but just making it more grammatically fluid. She stated she has noticed a big difference from judge to judge on that type of thing.

Vice Chair Richardson added that the positive thing about macros is that there would be no typo and grammatical mistakes in them, but the down side could be that they might not apply to the facts.

Executive Director/Chief ALJ Arcellana stated that there is a work crew studying this, because as with everything else, you do it properly. You just don't jam it out and, as a matter of a fact, this project has been ongoing for two years now.

Vice Chair Richardson stated that when she started practicing law, she dictated everything and then she got stage fright and was lost. Her son is also a lawyer types and has typed everything from his law school notes all the way through the bar, so he has never dictated.

#### **7. Chief Counsel's Report:**

Chief Counsel Ralph Hilton reported that June was a very high month for the Board Members, with 669 cases each. Chief Counsel Ralph Hilton stated this is the highest month he has seen since he has been here.

Chief Counsel Hilton reported that the litigation report shows that there were five new cases filed in June, three cases were closed, all of which affirmed the Board. One of the five new cases is an appeal of a board decision on rate manipulation.

Vice Chair Richardson asked that she kept advised as to the status of that case.

#### **8. Unfinished & New Business:**

Chief Counsel Hilton presented a proposed regulation amendment, a technical clean up in language. Currently the term "remand" is used in the regulations to describe a referral back to both an ALJ and EDD for action. Remand is really a term of art that does not apply when the CUIAB asks EDD to consider taking some type of action. CUIAB doesn't really have the authority to remand a case to EDD. CUIAB has the authority to affirm, reverse, modify, or set aside an EDD determination only. Remand authority relates only to sending a case back to a field judge to do something specific, like conducting another hearing to consider additional evidence.

Vice Chair Richardson inquired if when we refer it back to EDD, is it for something specific like a decision or do we just say here it is and that is that?

Chief Counsel Hilton responded that basically we are requesting that EDD take a look at some aspect of the claim and consider taking some particular action.

Vice Chair Richardson inquired if we can require them to do something specific, to which Chief Counsel Hilton responded that we cannot.

Board member Carbaugh asked if we are going outside the scope of the ALJ hearing to collect additional facts.

Chief Counsel Hilton stated we can always refer a case back to the ALJ to take in additional facts, but we have no authority to direct EDD to do so.

Board Member Strom-Martin stated she has seen cases where the ALJ has made recommendations to the Department for clarification.

The proposed modification was approved by unanimous vote of the Board.

**9. Public Comment:**

There was no public comment.

**10. Closed Session:**

The regularly scheduled Board meeting adjourned, and the Board went into closed session. No votes were taken in closed session.

**11. Oral Argument:**

The Board reconvened its public session for oral argument in the Case No. AO-97761, JB Start International Services Inc.

**12. Closed Session:**

The Board meeting adjourned again, and the Board went into closed session for judicial deliberation with regard to Case No. AO-97761, JB Start International Services Inc. No votes were taken.